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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

CHARLYN ELLIS, an individual,

Case No. 6:24-cv-00205-AA

Plaintiff,

**DECLARATION OF KERRY J.
SHEPHERD IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

v.

CITY OF CORVALLIS, acting by and
through the Corvallis City Council,

Defendant.

I, Kerry J. Shepherd, declare as follows:

1. I am an attorney with Markowitz Herbold PC, attorneys of record for the City of Corvallis. I have personal knowledge of the facts set forth herein. I make this declaration in support of Defendant's Motion for Summary Judgment.

2. On January 8, 2024, David Coulombe and I spoke with Councilor Ellis' attorney, Jesse Buss, to stipulate to the timing and process for the due process hearing. Mr. Buss requested an extension of the hearing to February 5, 2024. We agreed to the following:

- 1/16/2024: Reach agreement on stipulated record.

- 1/22/2024 by noon: Mr. Shepherd to submit the City's hearing memorandum and exhibits. This is to be done electronically in PDF format with copies provided to:
 - City of Recorder
 - David Coulombe – Deputy City Attorney
 - Jesse Buss – Councilor Ellis' Attorney
- 1/30/2024 by noon: Mr. Buss to submit Councilor Ellis' memorandum and exhibits in the same fashion.
- 1/30/2024: Mr. Shepherd to prepare and submit notebooks for all City Councilors, the City Recorder, the two City Attorneys, and opposing counsel that contains the City's prehearing statement and exhibit books.
- 2/5/2024 – 6:00 p.m.: Due Process Hearing in person at City Hall in Corvallis.

3. On behalf of the City of Corvallis, we filed the agreed hearing memorandum and exhibits on January 22, 2024.

4. On January 22, 2024, Mr. Buss filed a lawsuit in Benton County Circuit Court, Case No. 24CV02484. We received notice of this filing the next morning, on January 23. This was the first notice we received from Mr. Buss of his intention to file a lawsuit. By 1:45 p.m. on January 23, I had agreed that an attorney for the City of Corvallis would accept service of the summons and complaint, and I scheduled a phone call to confer with Mr. Buss for 8:30 a.m. on January 24.

5. I spoke with Mr. Buss the morning of January 24, 2024. We specifically discussed the due process hearing, and I informed Mr. Buss that the February 5, 2024 hearing had been taken off the calendar due to the lawsuit that he filed on behalf of Councilor Ellis. I also prepared and sent an email to Mr. Buss, dated January 24, 2024, telling him that the due process hearing had been "cancelled" and that the City would "maintain the status quo in the interim." Because of this, I notified Mr. Buss that he did not need to prepare and file his due

process hearing memorandum. Copied here is the substance of the email that I sent to Mr. Buss that day:

RE: Ellis matter (City of Corvallis local proceeding)



Kerry Shepherd

To: Jesse A. Buss

Cc: David Coulombe

Reply Reply All Forward

Wed 1/24/2024 10:22 AM

Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

Jesse,

Following up on our call and your email. I'd like to answer your question and reiterate a few important points. First, you asked whether the City has "*fully suspend[ed]*" the due process hearing. I don't fully understand what that means to you. Maybe you can clarify your intention in this regard. Doing so might be helpful. I will be in a position to communicate with you further once the City's attorneys go to the executive session, as we discussed. That said, the Feb. 5 due process hearing is cancelled, which is the first point I made with you, and I need to go to executive session for further guidance and decisions. I know you appreciate that, which is why I have asked you to tell me whether your client will *not* attend the executive session, and the permutations that will occur if she insists on attending. I appreciate that you will get back to me promptly on that matter. You also do *not* need to prepare and file the due process hearing memo scheduled for Jan. 30 for the Feb. 5 hearing.

With respect to the circuit court case, I need to discuss this at executive session as well. There is no exigency and no need for a preliminary injunction hearing because we've cancelled the Feb. 5 hearing and will maintain the status quo in the interim. As always, we'll be transparent with you about how we want to proceed after talking with our clients. I've also been transparent with you about my personal thoughts about what should happen from this point forward in light of the circuit court case. I don't imagine that you or your client want to interfere with prompt meetings and decision-making in response to a lawsuit that she filed without any notice to us, and which we received yesterday. The City has been open, transparent, and cooperative with you and your client in every way I can imagine, and we ask for reciprocity.

Let's talk when you've connected with your client today.

Regards,

Kerry

Kerry J. Shepherd | Shareholder

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6. Attached are true and correct copies of the following exhibits:

Ex. No.	Document Description	Date
A.	Corvallis City Charter, also available at https://archives.corvallisoregon.gov/public/ElectronicFile.aspx?dbid=0&docid=2576656	Last revised 2021
B.	Excerpt of minutes of a City Council meeting	March 22, 1948
C.	Minutes of a City Council meeting	September 20, 1948
D.	Excerpt of Benton County Elections Index of Local Measures by Election Date from 1876 to Present, also available at https://re.bentoncountyor.gov/wp-content/uploads/2023/12/localmeasuredate.pdf .	

Ex. No.	Document Description	Date
E.	City of Corvallis' Due Process Hearing Memorandum	January 22, 2024
Original exhibits to Exhibit E		
1.	Transcript of the Climate Action Advisory Board meeting ("CAAB Transcript")	September 13, 2023
2.	Link to the video recording of the relevant discussion and deliberations of the Corvallis Climate Action Advisory Board on September 13, 2023, located at the City's website: https://vimeo.com/864621682 , beginning at approximately 38 minutes into the recording.	September 13, 2023
3.	Transcript of the City Council meeting	September 18, 2023
4.	Link to the video recording of the motion and the subsequent deliberations of the City of Corvallis City Council on September 18, 2023, which can be found on the City's website at https://vimeo.com/866087718?share=copy and beginning at approximately two hours and fourteen minutes into the recording.	September 18, 2023
5.	Letter from City of Corvallis to Councilor Charlyn Ellis with a copy of the draft Resolution Regarding a Violation of Section 23(f) and Declaring a Vacancy in Ward 5 Council Position	December 6, 2023
6.	Declaration signed by Mayor Charles Maughan, Council President Tracey Yee, Council Vice President Hyatt Lytle, City Manager Mark Shepard, and City Attorney James Brewer	December 5, 2023
7.	Letter from City of Corvallis to Councilor Charlyn Ellis (with attachments noted in Exhibits 5 and 6)	December 22, 2023
8.	Memorandum from City Manager, Mark Shepard, to City Council	January 16, 2024
9.	Letter from Attorney Jesse Buss, attorney for Councilor Charlyn Ellis	December 22, 2023
10.	Email from David Coulombe to Jesse Buss	January 2, 2024

Ex. No.	Document Description	Date
11.	Email from Councilor Ellis regarding two motions to present at the September 18, 2023 City Council meeting	September 17, 2023
12.	Collection of emails from CAAB members to the Mayor and City Council for September 18, 2023 City Council meeting	September 15 – September 18, 2023
13.	City of Corvallis, Council Action Minutes from September 18, 2023 City Council meeting	September 18, 2023
14.	Transcript of the City Council meeting on December 18, 2023, beginning at one hour and fifty-five minutes and forty-five seconds (1:55:45) into the recording. The City agreed to have this selection transcribed at the request of Councilor Ellis' attorney.	December 18, 2023
15.	Link to the video recording of the discussion at the City Council on December 18, 2023, which can be found on the City's website at https://vimeo.com/896334597	December 18, 2023
16.	Letter to the City Council from former elected representatives	January 8, 2024
17.	Collection of memoranda spanning from 1988 to 2020 from the City Attorney's Office regarding orientation training for City Council	1988 to 2020

7. Exhibits 14, 15, and 16 were submitted by counsel for plaintiff and included with the City's due process hearing memorandum as a professional courtesy.

I declare under penalty of perjury that the foregoing is true and correct.

Executed March 7, 2024, at Portland, Oregon.

s/ Kerry J. Shepherd

Kerry J. Shepherd, OSB #94434

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